



## 98TH GENERAL ASSEMBLY

### State of Illinois

2013 and 2014

SB2363

Introduced 2/15/2013, by Sen. Iris Y. Martinez

#### SYNOPSIS AS INTRODUCED:

30 ILCS 575/2	
50 ILCS 510/3	from Ch. 85, par. 6403
50 ILCS 510/4	from Ch. 85, par. 6404
50 ILCS 510/5	from Ch. 85, par. 6405
50 ILCS 510/6	from Ch. 85, par. 6406

Amends the Business Enterprise for Minorities, Females, and Persons with Disabilities Act. Specifies that a board of trustees of a community college district qualifies as a State university for the purposes of the Act. Amends the Local Government Professional Services Selection Act. Provides that a community college district does not qualify as a political subdivision qualifies for the purposes of the Act. Deletes a provision that exempted from the Act's notice, evaluation, and selection requirements those political subdivisions that have a satisfactory relationship for services with one or more firms. Effective immediately.

LRB098 10725 JDS 41059 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning finance.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Business Enterprise for Minorities,  
5 Females, and Persons with Disabilities Act is amended by  
6 changing Section 2 as follows:

7 (30 ILCS 575/2)

8 (Section scheduled to be repealed on June 30, 2016)

9 Sec. 2. Definitions.

10 (A) For the purpose of this Act, the following terms shall  
11 have the following definitions:

12 (1) "Minority person" shall mean a person who is a  
13 citizen or lawful permanent resident of the United States  
14 and who is any of the following:

15 (a) American Indian or Alaska Native (a person  
16 having origins in any of the original peoples of North  
17 and South America, including Central America, and who  
18 maintains tribal affiliation or community attachment).

19 (b) Asian (a person having origins in any of the  
20 original peoples of the Far East, Southeast Asia, or  
21 the Indian subcontinent, including, but not limited  
22 to, Cambodia, China, India, Japan, Korea, Malaysia,  
23 Pakistan, the Philippine Islands, Thailand, and

1 Vietnam).

2 (c) Black or African American (a person having  
3 origins in any of the black racial groups of Africa).  
4 Terms such as "Haitian" or "Negro" can be used in  
5 addition to "Black or African American".

6 (d) Hispanic or Latino (a person of Cuban, Mexican,  
7 Puerto Rican, South or Central American, or other  
8 Spanish culture or origin, regardless of race).

9 (e) Native Hawaiian or Other Pacific Islander (a  
10 person having origins in any of the original peoples of  
11 Hawaii, Guam, Samoa, or other Pacific Islands).

12 (2) "Female" shall mean a person who is a citizen or  
13 lawful permanent resident of the United States and who is  
14 of the female gender.

15 (2.05) "Person with a disability" means a person who is  
16 a citizen or lawful resident of the United States and is a  
17 person qualifying as being disabled under subdivision  
18 (2.1) of this subsection (A).

19 (2.1) "Disabled" means a severe physical or mental  
20 disability that:

21 (a) results from:

22 amputation,

23 arthritis,

24 autism,

25 blindness,

26 burn injury,

1 cancer,  
2 cerebral palsy,  
3 Crohn's disease,  
4 cystic fibrosis,  
5 deafness,  
6 head injury,  
7 heart disease,  
8 hemiplegia,  
9 hemophilia,  
10 respiratory or pulmonary dysfunction,  
11 an intellectual disability,  
12 mental illness,  
13 multiple sclerosis,  
14 muscular dystrophy,  
15 musculoskeletal disorders,  
16 neurological disorders, including stroke and  
17 epilepsy,  
18 paraplegia,  
19 quadriplegia and other spinal cord conditions,  
20 sickle cell anemia,  
21 ulcerative colitis,  
22 specific learning disabilities, or  
23 end stage renal failure disease; and  
24 (b) substantially limits one or more of the  
25 person's major life activities.  
26 Another disability or combination of disabilities may

1           also be considered as a severe disability for the purposes  
2           of item (a) of this subdivision (2.1) if it is determined  
3           by an evaluation of rehabilitation potential to cause a  
4           comparable degree of substantial functional limitation  
5           similar to the specific list of disabilities listed in item  
6           (a) of this subdivision (2.1).

7           (3) "Minority owned business" means a business concern  
8           which is at least 51% owned by one or more minority  
9           persons, or in the case of a corporation, at least 51% of  
10          the stock in which is owned by one or more minority  
11          persons; and the management and daily business operations  
12          of which are controlled by one or more of the minority  
13          individuals who own it.

14          (4) "Female owned business" means a business concern  
15          which is at least 51% owned by one or more females, or, in  
16          the case of a corporation, at least 51% of the stock in  
17          which is owned by one or more females; and the management  
18          and daily business operations of which are controlled by  
19          one or more of the females who own it.

20          (4.1) "Business owned by a person with a disability"  
21          means a business concern that is at least 51% owned by one  
22          or more persons with a disability and the management and  
23          daily business operations of which are controlled by one or  
24          more of the persons with disabilities who own it. A  
25          not-for-profit agency for persons with disabilities that  
26          is exempt from taxation under Section 501 of the Internal

1 Revenue Code of 1986 is also considered a "business owned  
2 by a person with a disability".

3 (4.2) "Council" means the Business Enterprise Council  
4 for Minorities, Females, and Persons with Disabilities  
5 created under Section 5 of this Act.

6 (5) "State contracts" shall mean all State contracts,  
7 funded exclusively with State funds which are not subject  
8 to federal reimbursement, whether competitively bid or  
9 negotiated as defined by the Secretary of the Council and  
10 approved by the Council.

11 "State construction contracts" means all State  
12 contracts entered into by a State agency or State  
13 university for the repair, remodeling, renovation or  
14 construction of a building or structure, or for the  
15 construction or maintenance of a highway defined in Article  
16 2 of the Illinois Highway Code.

17 (6) "State agencies" shall mean all departments,  
18 officers, boards, commissions, institutions and bodies  
19 politic and corporate of the State, but does not include  
20 the Board of Trustees of the University of Illinois, the  
21 Board of Trustees of Southern Illinois University, the  
22 Board of Trustees of Chicago State University, the Board of  
23 Trustees of Eastern Illinois University, the Board of  
24 Trustees of Governors State University, the Board of  
25 Trustees of Illinois State University, the Board of  
26 Trustees of Northeastern Illinois University, the Board of

1 Trustees of Northern Illinois University, the Board of  
2 Trustees of Western Illinois University, municipalities or  
3 other local governmental units, or other State  
4 constitutional officers.

5 (7) "State universities" shall mean the Board of  
6 Trustees of the University of Illinois, the Board of  
7 Trustees of Southern Illinois University, the Board of  
8 Trustees of Chicago State University, the Board of Trustees  
9 of Eastern Illinois University, the Board of Trustees of  
10 Governors State University, the Board of Trustees of  
11 Illinois State University, the Board of Trustees of  
12 Northeastern Illinois University, the Board of Trustees of  
13 Northern Illinois University, ~~and~~ the Board of Trustees of  
14 Western Illinois University, and the Board of Trustees of  
15 any community college district, as defined in subsection  
16 (d) of Section 1-2 of the Public Community College Act.

17 (8) "Certification" means a determination made by the  
18 Council or by one delegated authority from the Council to  
19 make certifications, or by a State agency with statutory  
20 authority to make such a certification, that a business  
21 entity is a business owned by a minority, female, or person  
22 with a disability for whatever purpose. A business owned  
23 and controlled by females shall select and designate  
24 whether such business is to be certified as a "Female-owned  
25 business" or "Minority-owned business" if the females are  
26 also minorities.

1           (9) "Control" means the exclusive or ultimate and sole  
2 control of the business including, but not limited to,  
3 capital investment and all other financial matters,  
4 property, acquisitions, contract negotiations, legal  
5 matters, officer-director-employee selection and  
6 comprehensive hiring, operating responsibilities,  
7 cost-control matters, income and dividend matters,  
8 financial transactions and rights of other shareholders or  
9 joint partners. Control shall be real, substantial and  
10 continuing, not pro forma. Control shall include the power  
11 to direct or cause the direction of the management and  
12 policies of the business and to make the day-to-day as well  
13 as major decisions in matters of policy, management and  
14 operations. Control shall be exemplified by possessing the  
15 requisite knowledge and expertise to run the particular  
16 business and control shall not include simple majority or  
17 absentee ownership.

18           (10) "Business concern or business" means a business  
19 that has annual gross sales of less than \$75,000,000 as  
20 evidenced by the federal income tax return of the business.  
21 A firm with gross sales in excess of this cap may apply to  
22 the Council for certification for a particular contract if  
23 the firm can demonstrate that the contract would have  
24 significant impact on businesses owned by minorities,  
25 females, or persons with disabilities as suppliers or  
26 subcontractors or in employment of minorities, females, or

1 persons with disabilities.

2 (B) When a business concern is owned at least 51% by any  
3 combination of minority persons, females, or persons with  
4 disabilities, even though none of the 3 classes alone holds at  
5 least a 51% interest, the ownership requirement for purposes of  
6 this Act is considered to be met. The certification category  
7 for the business is that of the class holding the largest  
8 ownership interest in the business. If 2 or more classes have  
9 equal ownership interests, the certification category shall be  
10 determined by the business concern.

11 (Source: P.A. 96-453, eff. 8-14-09; 96-795, eff. 7-1-10 (see  
12 Section 5 of P.A. 96-793 for effective date of changes made by  
13 P.A. 96-795); 96-1000, eff. 7-2-10; 97-227, eff. 1-1-12;  
14 97-396, eff. 1-1-12; 97-813, eff. 7-13-12.)

15 Section 10. The Local Government Professional Services  
16 Selection Act is amended by changing Sections 3, 4, 5, and 6 as  
17 follows:

18 (50 ILCS 510/3) (from Ch. 85, par. 6403)

19 Sec. 3. Definitions. As used in this Act unless the context  
20 specifically requires otherwise:

21 (1) "Firm" means any individual, firm, partnership,  
22 corporation, association or other legal entity permitted by law  
23 to practice the profession of architecture, engineering or land  
24 surveying and provide architectural, engineering or land

1 surveying services.

2 (2) "Architectural services" means any professional  
3 service as defined in Section 5 of the Illinois Architecture  
4 Practice Act of 1989.

5 (3) "Engineering services" means any professional service  
6 as defined in Section 4 of the Professional Engineering  
7 Practice Act of 1989 or Section 5 of the Structural Engineering  
8 Practice Act of 1989.

9 (4) "Land surveying services" means any professional  
10 service as defined in Section 5 of the Illinois Professional  
11 Land Surveyor Act of 1989.

12 (5) "Political subdivision" means any school district and  
13 any unit of local government of fewer than 3,000,000  
14 inhabitants, except home rule units and community college  
15 districts, as defined in subsection (d) of Section 1-2 of the  
16 Public Community College Act.

17 (6) "Project" means any capital improvement project or any  
18 study, plan, survey or new or existing program activity of a  
19 political subdivision, including development of new or  
20 existing programs which require architectural, engineering or  
21 land surveying services.

22 (Source: P.A. 91-91, eff. 1-1-00.)

23 (50 ILCS 510/4) (from Ch. 85, par. 6404)

24 Sec. 4. Public notice. Present provisions of law  
25 notwithstanding, in the procurement of architectural,

1 engineering or land surveying services, each political  
2 subdivision which utilizes architectural, engineering or land  
3 surveying services shall permit firms engaged in the lawful  
4 practice of their professions to annually file a statement of  
5 qualifications and performance data with the political  
6 subdivision. Whenever a project requiring architectural,  
7 engineering or land surveying services is proposed for a  
8 political subdivision, the political subdivision shall, ~~unless~~  
9 ~~it has a satisfactory relationship for services with one or~~  
10 ~~more firms:~~

11 (1) Mail a notice requesting a statement of interest in the  
12 specific project to all firms who have a current statement of  
13 qualifications and performance data on file with the political  
14 subdivision; or

15 (2) Place an advertisement in a secular English language  
16 daily newspaper of general circulation throughout such  
17 political subdivision, requesting a statement of interest in  
18 the specific project and further requesting statements of  
19 qualifications and performance data from those firms which do  
20 not have such a statement on file with the political  
21 subdivision. Such advertisement shall state the day, hour and  
22 place the statement of interest and the statements of  
23 qualifications and performance data shall be due.

24 (Source: P.A. 85-854.)

25 (50 ILCS 510/5) (from Ch. 85, par. 6405)

1           Sec. 5. Evaluation Procedure. A political subdivision  
2 shall, ~~unless it has a satisfactory relationship for services~~  
3 ~~with one or more firms,~~ evaluate the firms submitting letters  
4 of interest, taking into account qualifications, ability of  
5 professional personnel, past record and experience,  
6 performance data on file, willingness to meet time  
7 requirements, location, workload of the firm, and such other  
8 qualifications-based factors as the political subdivision may  
9 determine in writing are applicable. The political subdivision  
10 may conduct discussions with and require public presentations  
11 by firms deemed to be the most qualified regarding their  
12 qualifications, approach to the project, and ability to furnish  
13 the required services. In no case shall a political  
14 subdivision, prior to selecting a firm for negotiation under  
15 Section 7, seek formal or informal submission of verbal or  
16 written estimates of costs or proposals in terms of dollars,  
17 hours required, percentage of construction cost, or any other  
18 measure of compensation.

19           (Source: P.A. 94-1097, eff. 2-2-07.)

20           (50 ILCS 510/6) (from Ch. 85, par. 6406)

21           Sec. 6. Selection procedure. On the basis of evaluations,  
22 discussions and presentations, the political subdivision  
23 shall, ~~unless it has a satisfactory relationship for services~~  
24 ~~with one or more firms,~~ select no less than 3 firms which it  
25 determines to be the most qualified to provide services for the

1 project and rank them in order of qualifications to provide  
2 services regarding the specific project. The political  
3 subdivision shall then contact the firm ranked most preferred  
4 and attempt to negotiate a contract at a fair and reasonable  
5 compensation, taking into account the estimated value, scope,  
6 complexity, and professional nature of the services to be  
7 rendered. If fewer than 3 firms submit letters of interest and  
8 the political subdivision determines that one or both of those  
9 firms are so qualified, the political subdivision may proceed  
10 to negotiate a contract pursuant to this Section and Section 7.  
11 (Source: P.A. 85-854.)

12 Section 99. Effective date. This Act takes effect upon  
13 becoming law.